

IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building

100 Cambridge Street, Boston 02204

August 6, 1984

You request a ruling as to the application of the Massachusetts sales tax to sales of products of your client, ("Company"), a multilevel marketing company. You also wish to know whether the Company should register as a vendor, and what the due dates and procedures are for filing returns and making payments of taxes.

You state that the Company sells food supplements and ointments made from flower pollen concentrates. The Company markets its products through a multilevel distribution plan involving independent distributors. The products are sold to the distributors at wholesale prices. Some distributors intend to register as vendors; others do not.

Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempted. Section 6(h) of Chapter 64H exempts from the sales tax sales of food products sold for human consumption. Specifically excluded from the definition of food products are "medicines, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts." (G.L. c. 64H, § 6(h)).

Section 6(1) of Chapter 64H exempts from the sales tax sales of medicine on the prescriptions of registered physicians.

Food supplements made from flower pollen concentrates are not included within the definition of food products. Neither the food supplements nor the ointments made from flower pollen concentrates are sold on the prescriptions

August 6, 1984

of registered physicians. Therefore, retail sales of the Company's products, food supplements and ointments, are subject to the Massachusetts sales tax.

You inquire whether the Company should register as a vendor.

A vendor is defined as any retailer or other person selling tangible personal property the sales of which are taxable. (G.L. c. 64H, § 1(18)). No person may do business in Massachusetts as a vendor unless a registration has been issued to him for each place of business in accordance with the requirements of Chapter 62C, Section 67. (G.L. c. 64H, § 7).

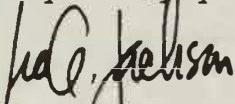
A retail sale is defined as a "sale of tangible personal property for any purpose other than resale in the regular course of business." (G.L. c. 64H, § 1(13)). All of a vendor's gross receipts from the sale of tangible personal property are presumed to be from retail sales unless the vendor takes from the purchaser in good faith a Massachusetts resale certificate. (G.L. c. 64H, § 8).

The Company is a vendor as defined in Chapter 64H, Section 1(18) and therefore should register as a vendor with the Taxpayer Assistance Bureau. All of the Company's gross receipts from the sales of its products will be presumed to be from taxable retail sales unless the Company takes in good faith from its distributors resale certificates.

You also inquire what are the procedures for vendor registration. booklet ABCs of Massachusetts Taxes: Sales and Use Taxes, Form TA-1, and the State Tax Administration Regulation on Sales and Use Tax Returns and Payments. These documents should answer your questions.

If the Company wishes to collect and pay sales taxes on behalf of all its independent distributors, please contact Mr. William Halmkin, Deputy Commissioner for Operations. His office will determine whether the Company may pay the sales tax directly to the Commissioner on behalf of its distributors.

Very truly yours,



Commissioner of Revenue

IAJ:JES:mf

LR 84-54